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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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11

DATE MAILED:

This is a communication from the examiner in charge of your application.  
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OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on September 12, 2002
- ☒ This action is **FINAL**.

- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-10 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-10 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION ON THE FOLLOWING PAGES—

BEST AVAILABLE COPY

Art Unit: 3739

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejections set forth in the previous office action are hereby repeated.

Claims 4, 5, and 8-10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bille et al ('586).

Claims 1-3, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Warner et al. Bille et al ('586) teach a method such as claimed Warner et al teach the desirability of creating a surface flap prior to ablating corneal stroma. It would have been obvious to the artisan of ordinary skill to employ the ablation method of Bille et al ('586) in the method of Warner et al, since this provides more accurate ablation, as taught by Bille et al ('586) thus producing a method such as claimed.

Applicant argues that "Bille actually teaches away from the methods of Claims 4, 5, and 8-10". However, applicant does not in any way explain the basis for this belief. It is the examiner's view that the teaching of Bille to minimize the effect on peripheral tissue is due to the recognition of need to, among other things, allow the plume to dissipate. Regardless of this, however, it appears that applicant is attempting to rely on the recitation "so that the plume of ablated material ... will not substantially interfere ..." to distinguish over Bille et al ('586). However, as this recitation is a statement of result, which is supported by substantial structure, materials, or acts recited in the claim, this recitation of result cannot be accorded functional weight (see MPEP 2181). Thus this argument is not convincing.

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The Terminal Disclaimer is improper because the person signing does not have power of attorney, and cannot overcome the double patenting rejections. Thus these rejections are hereby repeated.

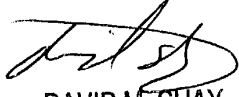
Applicant's arguments filed September 12, 2002 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to David Shay at telephone number (703) 308-2215.

David Shay:lf  
Number 26, 2002

  
**DAVID M. SHAY**  
**PRIMARY EXAMINER .**  
**GROUP 330**